

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate  
Implementing a Decoupling Mechanism for  
Hawaiian Electric Company, Inc., Hawaii  
Electric Light Company, Inc., and Maui  
Electric Company, Limited.

DOCKET NO. 2008-0274

PUBLIC UTILITIES  
COMMISSION

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**REPLY BRIEF OF BLUE PLANET FOUNDATION**

**AND**

**CERTIFICATE OF SERVICE**

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**REPLY BRIEF OF BLUE PLANET FOUNDATION**

Blue Planet Foundation (“Blue Planet”), by and through its attorneys Schlack Ito Lockwood Piper & Elkind, hereby respectfully submits its Reply Brief in support of its Opening Brief filed September 9, 2009 (“Opening Brief”) and its position in this proceeding to investigate the implementation of decoupling.<sup>1</sup>

**I. ISSUE I: “Will Decoupling Help Achieve Hawaii’s Objectives?”**

Blue Planet supports the adoption of sales decoupling with a Revenue Adjustment Mechanism (“RAM”) (together, “decoupling mechanism”) in this proceeding that meaningfully and effectively aids in the achievement of Hawaii’s energy objectives. As more fully explained in its Opening Brief, Blue Planet respectfully submits that the Commission’s decision in this proceeding should be guided by its evaluation of the extent to which the decoupling mechanism helps to achieve three major Hawaii energy objectives: (1) achievement of Renewable Portfolio Standards; (2) the rapid adoption of renewable energy and increased energy efficiency; and (3)

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<sup>1</sup> Blue Planet’s Reply Brief is timely filed in accordance with the September 29, 2009 due date established by the Commission’s letter to the parties dated August 7, 2009. *Id.* at 2.

increased public awareness and support for the decoupling mechanism, related Hawaii energy objectives, and Hawaii's swift transition to a clean energy economy.<sup>2</sup>

The utilities' statutory requirement to acquire specific percentages of electrical energy from renewable energy and energy efficiency, or Renewable Portfolio Standards ("RPS"), constitutes one of the principal energy objectives for the State of Hawaii.<sup>3</sup> The Commission should adopt a decoupling mechanism that meaningfully and effectively aids the utilities in achieving the RPS, and should require a performance incentive mechanism to ensure the RPS is met and to build public awareness and support for achievement of the RPS. In addition to aiding the HECO Companies in complying with the Hawaii RPS law, the decoupling mechanism should more generally support efforts to promote the rapid adoption of renewable energy and increased energy efficiency, as required by state law and consistent with the HECO Companies' commitments under the Hawaii Clean Energy Initiative<sup>4</sup> ("HCEI") and Energy Agreement.<sup>5</sup>

The decoupling mechanism adopted in this proceeding must also, to the extent possible, encourage and support increased public involvement in Hawaii's transition to a clean energy economy. Blue Planet is a Hawaii public interest organization, with over 7,500 registered "Friends of Blue Planet," dedicated to ending Hawaii's dependence on imported fossil fuel by promoting the rapid adoption of renewable energy and increased energy efficiency. Blue

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<sup>2</sup> Blue Planet acknowledges that maintaining and protecting the HECO Companies' financial integrity to support the HECO Companies' efforts to achieve Hawaii's energy objectives is an equally important objective of the decoupling mechanism. Unless otherwise noted, it is assumed the decoupling mechanism adopted in this proceeding will, generally speaking, maintain and protect the HECO Companies' financial integrity. Whether and to what extent the decoupling mechanism adopted in this proceeding will achieve Hawaii's energy objectives, however, is unclear. Thus, the three identified Hawaii energy objectives are appropriate criteria for evaluating the decoupling mechanism in this proceeding.

<sup>3</sup> See Haw. Rev. Stat. ch. 269, Part V, *et seq.*

<sup>4</sup> "Memorandum of Understanding Between the State of Hawaii and the U.S. Department of Energy."

<sup>5</sup> "Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies" dated Oct. 20, 2008 ("Energy Agreement").

Planet's vision is one of diverse interests uniting around a common goal: Hawaii's swift transition to a clean energy economy. Public awareness and support for this transition is crucial to achieving Hawaii's ambitious energy policy objectives.

It is unclear whether and to what extent the Joint Decoupling Proposal<sup>6</sup> is likely to aid the HECO Companies achieving these three major Hawaii energy objectives because the Joint Decoupling Proposal presently lacks a performance incentive mechanism.

## **II. ISSUE III: "Revenue Adjustment Mechanism: How Well Does it Achieve Hawaii's Objectives?"**

In general, Blue Planet supports adoption of the Joint Decoupling Proposal, subject to its comments concerning RAM calculation, customer class allocation, and return on equity as set forth in its Opening Brief.

It is noted that, with regard to customer class allocation, the HECO Companies appear to agree with Blue Planet that the Revenue Balancing Account ("RBA") allocation may be made to all customers, i.e., without regard to customer class. Blue Planet's Opening Brief argues the sales decoupling adjustment "should be determined on a total company basis, not on a customer class basis," in part because it would avoid penalizing a customer class that reduces its energy consumption. Opening Brief at 12-13. Similarly, the HECO Companies' Opening Brief states that, "[a] single RBA rate adjustment in effect is a simplified proxy for completing a revised cost-of-service study between rate cases." HECO Opening Brief at 94. The HECO Companies further indicate they are willing to review this approach with the Consumer Advocate<sup>7</sup> as an acceptable modification to the Joint Decoupling Proposal. *Id.*

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<sup>6</sup> HECO Companies and Consumer Advocate, "Joint Proposal on Decoupling and Statement of Position of the HECO Companies and the Consumer Advocate" filed Mar. 30, 2009, as amended.

<sup>7</sup> State of Hawaii Department of Commerce and Consumer Affairs Division of Consumer Advocacy ("Consumer Advocate").

### **III. ISSUE VI: “What Review Processes and Safeguards Should the Commission Consider?”**

As more fully explained in its Opening Brief, Blue Planet respectfully submits that the Commission should adopt a decoupling mechanism in this proceeding that includes a Performance Incentive Mechanism (“PIM”). The HECO Companies acknowledge the importance of aligning incentives with regulatory policies and the influence of such policies on the utilities; as HECO’s Robbie Alm has stated, “[i]f the PUC gives us the incentive to stop being a zebra and start being a giraffe, we’ll be giraffes.”<sup>8</sup> Blue Planet favors the adoption of a PIM in conjunction with the Joint Decoupling Mechanism to aid in the achievement of Hawaii’s energy objectives.

#### **A. A Performance Incentive Mechanism Is a Necessary Element of the RAM/HCEI *Quid Pro Quo*.**

It is appropriate that the utilities offer a *quid pro quo* benefit to the non-utility parties and ratepayers in exchange for the benefit they are to receive in the form of the RAM. It is undisputed that the RAM confers a significant financial benefit to the HECO Companies. In general, the benefit conferred by the RAM to the HECO Companies is to maintain and protect their financial integrity during the time that they seek to contribute toward the achievement of Hawaii’s energy objectives. More specifically, the RAM benefits the utilities by providing automatic revenue adjustments, avoidance of rate cases, and reduced regulatory lag. In exchange for the RAM, as a matter of general fairness and equity the HECO Companies should offer a benefit of equal value and importance, or *quid pro quo*, to the ratepayers and non-utility interested parties.

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<sup>8</sup> Creative Conflict Solutions, “A Clean Energy Future for Maui and Hawaii: Conversations with Key Players (2009) at 19, available at <http://creativeconflictsolutions.wordpress.com/>.

The HECO Companies have suggested that in exchange for the RAM they will comply with the Hawaii RPS law and seek to fulfill their commitments under the HCEI and Energy Agreement. It is unclear whether the HECO Companies' efforts to fulfill their obligations under the HCEI Agreement constitute a valid *quid pro quo* in exchange for the RAM. The overarching objective of the HCEI and Energy Agreement is the achievement of seventy percent clean energy in Hawaii by 2030. Act 155 has made that objective a legal requirement; the utilities are now required by law to achieve seventy percent clean energy by 2030. As the HECO Companies noted in their Opening Brief,<sup>9</sup> with the Act 155 Hawaii law, "there is no 'without HCEI' scenario." HECO Opening Brief Exhibit F at 2. Assuming RAM is a valid *quid pro quo* for the HECO Companies' compliance with the Hawaii RPS law and fulfillment of their HCEI and Energy Agreement commitments, it is reasonable and appropriate for the Commission to require the HECO Companies to document and demonstrate compliance accordingly by means of a PIM. Indeed, as the Department of Business, Economic Development and Tourism ("DBEDT") observed in its Opening Brief, viewed in this light the HECO Companies' assertion that a PIM is unreasonable and unnecessary<sup>10</sup> is "without merit and absurd."<sup>11</sup>

**B. A PIM Will Aid In Achievement of Hawaii's Energy Objectives.**

In addition to being appropriate as a *quid pro quo*, a PIM may play a valuable role in achieving Hawaii's critical energy objectives. The Commission should require the decoupling mechanism to include a PIM because a PIM will aid the utilities in complying with the Hawaii RPS law. As the name indicates, a PIM will offer incentives to the utilities. Such incentives are

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<sup>9</sup> Opening Brief of Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited filed Sept. 8, 2009 ("HECO Opening Brief").

<sup>10</sup> See, e.g., HECO Opening Brief at 79 ("Proposal to tie HCEI Performance Metrics to RAM Recovery is Unnecessary").

<sup>11</sup> The Department of Business, Economic Development and Tourism's Opening Brief filed Sept. 8, 2009 at 24 ("DBEDT Opening Brief").

consistent with the Hawaii RPS law, which authorizes the Commission to “provide incentives to encourage the electric utility companies to exceed their renewable portfolio standards or to meet their renewable portfolio standards ahead of time, or both.” Haw. Rev. Stat. § 269-94. In addition, by providing incentives and penalties based upon a numerical formula, a PIM may encourage further precise quantification of efforts to achieve compliance with the Hawaii RPS law.

In addition to Hawaii RPS law compliance, a PIM may more generally aid in rapid adoption of renewable energy and increased energy efficiency. A PIM may include a relatively broad-based measure of achievement of Hawaii’s energy objectives. Such a broad-based measure may stimulate and support a variety of efforts and measures related to renewable energy production and increased energy efficiency.

A PIM can also serve as a powerful tool to promote and encourage public awareness and support for the decoupling mechanism, the Hawaii RPS law, and related energy objectives found in the HCEI and Energy Agreement. To the extent the HECO Companies produce publicly-available documents and information pursuant to a PIM, Blue Planet would welcome the opportunity to partner with the utilities and employ such information in ongoing efforts to educate and build public support for renewable energy and energy efficiency in Hawaii.

**C. Clean Energy Utilization PIM.**

Consistent with foregoing, Blue Planet proposed in its Opening Brief a Clean Energy Utilization PIM (“CEU PIM”) to be incorporated in the decoupling mechanism adopted

in this proceeding.<sup>12</sup> As noted by the Consumer Advocate in its Opening Brief, “utility resistance has long been seen as a roadblock to greater progress towards Hawaii’s efforts to become more energy independent[.]”<sup>13</sup> The CEU PIM seeks to address any utility resistance by offering a financial reward for excellent performance in implementing clean energy.

The CEU PIM measures the annual improvement in percent of total energy requirements supplied by clean energy resources according to the following basic formula:

$$\text{Clean Energy Utilization} / \text{Total Energy Requirements} = \_\_\% \text{ CEU}$$

An increased percentage CEU reflects progress in achieving Hawaii’s energy objectives. CEU, measured in megawatt hours, shall be comprised of (i) renewable generation, including generation from biofuels, regardless of utility and/or non-utility ownership of the generation units, (ii) renewable displacement or off-set technologies (as defined in Act 155), and (iii) energy efficiency technologies (as defined in Act 155). Total Energy Requirements (“TER”), shall be comprised of (i) utility electric sales, (ii) renewable displacement or off-set technologies (as defined in Act 155), and (iii) energy efficiency technologies (as defined in Act 155). The CEU ‘numerator’ of the CEU PIM formula is appropriate insofar as it is consistent with the overarching Hawaii energy objective of seventy percent clean energy by 2030, and the TER ‘denominator’ is appropriate insofar as it approximates utility electric sales absent reduced sales due to behind-the-meter renewable energy displacement technologies and energy efficiency.

The CEU PIM should be simple and easily understood by the Commission, the utilities, other stakeholders, and the public. It should encourage and support the HECO Companies in their efforts to accelerate clean energy implementation by providing an additional

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<sup>12</sup> As noted in the Opening Brief, Blue Planet submits that its CEU PIM is directly related to and builds upon the performance mechanisms proposed and discussed by the parties in this proceeding. See Blue Planet Opening Brief at 22, n.28.

<sup>13</sup> Division of Consumer Advocacy’s Post-Hearing Opening Brief filed Sept. 8, 2009 at 3.



financial incentive and reward. CEU PIM performance would be measured based on the change in percentage utilization from the prior year. For example, the 2010 performance incentive award would be predicated upon the improvement in clean energy utilization from 2008 to 2009. The CEU PIM would be symmetrical; i.e., it would seek to reward excellent improvement and penalize poor performance with respect to achieving Hawaii energy objectives. The incentive reward or penalty would be implemented by adjusting the annual RAM rate change upward or downward based upon the following illustrative performance matrix.

**Table 1: RAM Rate Adjustment Per CEU PIM**

Annual Change in Clean Energy Utilization Percentage	CEU PIM Adjustment to Annual RAM Rate Change (\$000)			Approximate Equivalent ROE Impact
	HECO	HELCO	MECO	
≥+ 3.0%	\$7,000	\$2,000	\$2,000	0.50%
+ 2.0%	\$3,500	\$1,000	\$1,000	0.25%
+1.0%	\$0	\$0	\$0	0.00%
0.0%	(\$3,500)	(\$1,000)	(\$1,000)	-0.25%
≤- 1.0%	(\$7,000)	(\$2,000)	(\$2,000)	-0.50%

As illustrated in Table 1, an increase of 1.0% annually is proposed as the baseline measurement. Any RAM rate adjustments pursuant to the CEU PIM would be implemented separately for each of the HECO Companies pursuant to their individual RAM tariffs. The maximum upward/downward incentive adjustment to annual RAM rate change would be equivalent to approximately  $\pm 0.5\%$  ROE change for each of the HECO Companies. Although the CEU PIM may be administered and implemented in conjunction with the RAM, it is otherwise generally an independent mechanism.

**D. The HECO Companies' Objections to PIM Are Not Convincing.**

**1. Control over energy efficiency measures.**

Any lack of control by the HECO Companies over certain aspects of energy efficiency measures is not a valid basis for the Commission to reject a PIM in this proceeding. See HECO Opening Brief at 80; Joint Decoupling Proposal Exhibit E; HECO Companies Response to PUC-IR-30 filed May 18, 2009. Although certain energy efficiency measures are to be administered by a third party, the HECO Companies retain extensive control over energy efficiency, load management programs and rate design (which is proven to encourage reduced energy consumption based on price elasticity). Indeed, in presenting their arguments to the Commission in favor of sales decoupling, the HECO Companies have stressed that they "are still involved in energy efficiency programs for commercial and industrial customers," as well as rate designs for all customers. HECO Opening Brief at 59.

The CEU PIM is simple, straightforward, and designed to avoid the complexities alleged by the HECO Companies in opposition to a PIM. The HECO Companies suggest provisions concerning a PIM would be "extremely complex" in part because the PIM would entail HCEI-related programs as yet not approved by the Commission. HECO Opening Brief at 80. The CEU PIM, however, avoids this alleged complexity by relying upon relatively simple and straightforward determinations of total clean energy usage and total energy requirements.

**2. Hawaii RPS law penalties.**

Penalties under the Hawaii RPS law do not provide a basis for the Commission to reject a PIM.<sup>14</sup> Although the HECO Companies may be said to have an incentive to avoid

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<sup>14</sup> If the Commission determines after a hearing that an electric utility company failed to meet the RPS, the utility shall be subject to a penalty of \$20 for each megawatt hour the utility falls short of the RPS. The Commission may, however, in its discretion waive any applicable penalties if it determines the electric utility company is unable to meet the RPS due to events or circumstances "beyond the usual control" of the utility. Haw. Rev. Stat. § 269-92(c). Such events or circumstances include the failure of renewable energy producers to meet contractual obligations,

paying penalties for violations of the Hawaii RPS law (“penalty incentive”),<sup>15</sup> the CEU PIM establishes a fundamentally different type of incentive. The CEU PIM provides a monetary reward to the utilities for excellent performance (“reward incentive”). Thus, it creates a monetary incentive for the rapid achievement of Hawaii’s energy objectives. Although the CEU PIM also penalizes the utilities for poor performance, it includes a reward incentive and therefore differs fundamentally from the Hawaii RPS law penalties.

### 3. Future RAM review.

The HECO Companies also suggest that a PIM may be rejected in this proceeding because the Commission will evaluate HECO Companies’ performance as related to the RAM in future rate cases. Blue Planet and other intervenor parties are not expected to be parties to such future rate cases and thus will be foreclosed from observing and participating in this evaluation. *See, e.g.* HECO Opening Brief at 81. In addition, the reasons supporting adoption of a PIM in conjunction with a future evaluation apply with equal force at this time. As explained above with regard to the incentive created by the CEU PIM, the PIM includes a “reward incentive” in addition to a “penalty incentive,” and is therefore intended to support and ensure achievement of Hawaii’s energy objectives from the outset. This is especially significant given the past failures to achieve articulated energy objectives.

### 4. HCEI Report

Finally, in exchange for a decoupling mechanism that does not incorporate a PIM with a reward incentive, the HECO Companies offer to submit a report in conjunction with its next cycle of rate cases. HECO Opening Brief at 81-82; Joint Decoupling Proposal Exhibit E at 3. The report would include “the status of HCEI initiatives” such as net energy metering, feed-in

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lapsing of renewable energy tax credits, the inability to obtain “cost-effective” renewable electrical energy, and the inability of renewable energy development projects to obtain permits or land use approvals. *Id.* at § 269-92(d).

<sup>15</sup> *See, e.g.* HECO Opening Brief at 79 (RPS penalties “provide incentives and safeguards”).

tariff, and renewable generation. *Id.* Blue Planet respectfully submits that such reporting is made valuable to the extent it can be utilized to support achievement of Hawaii's energy objectives. A meaningful and effective way to utilize such analysis and reporting is in support of a PIM, which not only provides status information but links such information to actual performance.

#### **IV. INTERIM DECISION AND ORDER AND MODIFIED PROCEDURAL SCHEDULE.**

Subject to the conditions set forth below, Blue Planet recommends the Commission consider issuing an interim decision and order and modifying the procedural schedule in this proceeding accordingly. In its Opening Brief, Haiku Design and Analysis ("HDA") sets forth its "Brief Summary of Recommendations." *See* Haiku Design and Analysis Opening Brief at 7-9.<sup>16</sup> Based in part upon HDA's recommendations, Blue Planet respectfully requests the Commission to consider the following recommendations.

##### **A. Interim Order and Amended Procedural Schedule.**

That the Commission issue an interim decision and order ("interim order") to address certain issues in this proceeding, as more fully described below, and that the Commission modify the procedural schedule in this proceeding accordingly. It is suggested that the interim order direct the parties to seek agreement on an amended stipulated procedural schedule within fourteen days after issuance of the interim order. It is further suggested that the interim order indicate that the Commission shall seek to issue its final order in this proceeding no later than December 31, 2010.

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<sup>16</sup> These recommendations include, in part, that the Commission issue an interim decision and order (i) approving the RBA to commence immediately for HECO and with the 2010 interim rate case decision and order for MECO and HELCO, and (ii) approving a one-year implementation of the proposed RAM for HECO, on the condition that HECO not file a 2010 test year rate case. HDA further recommends in its Opening Brief that the Commission determine in its final decision and order in this proceeding (i) whether the HECO RAM should be continued, modified or terminated, (ii) whether RAM should be adopted for MECO and HELCO, and (iii) whether a PIM should be adopted. HDA Opening Brief at 7-9.

It should be emphasized that the foregoing suggestion is predicated upon the Commission also adopting the recommendations set forth in section IV.D, "PIM," below, regarding the PIM (in particular, the technical session, subsequent briefing, and a Commission decision on the PIM). Stated otherwise, if the Commission chooses to not adopt the recommendations concerning the PIM, Blue Planet does not support or recommend that the Commission issue an interim order regarding the RBA and RAM, as described in sections IV.B and IV.C, below.

**B. RBA**

That the interim order adopt and order immediate implementation of the RBA for HECO, and implementation of the RBA for MECO and HELCO with issuance of the interim decision and orders in their respective 2010 rate cases.

**C. RAM**

That the interim order adopt and order immediate implementation of the RAM for HECO ("2010 HECO RAM").<sup>17</sup> It is suggested that the interim order should indicate that the 2010 HECO RAM is to continue until issuance of the interim decision and order in the HECO 2011 rate case, and that HECO should file its application for the 2011 rate case no later than August 16, 2010. It is further suggested that review of the RBA and RAM filing process should occur in April 2010, and the amended procedural schedule should reflect this.

**D. PIM and Other Issues.**

That the interim order indicate that the amended procedural schedule include at least one technical session on the PIM to be held within sixty days following Commission adoption of the amended procedural schedule. It is suggested that the order indicate that the

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<sup>17</sup> Blue Planet has no position at this time as to when the Commission may order implementation of the RAM for MECO and/or HELCO.

amended procedural schedule include submissions by the parties, such as Statements of Position, regarding the PIM issue after the technical session and prior to a final Commission decision in this proceeding. It is further suggested that a technical session to review customer communication materials be scheduled in the first quarter of 2010.

DATED: Honolulu, Hawaii, September 29, 2009.

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a copy of the foregoing document was  
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